IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 543 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRATAPSINH SHIBSINH SOLANKI - Appellant(s)
Versus
RATANSING RAMSING HARIJAN - DELETED AS PER EXH. - 10. - Defendant(s)

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Appearance :

MR DHAVAL BAROT for MR DF AMIN for Appellant(s) : 1,
DELETED for Defendant(s) : 1,
RULE UNSERVED for Defendant(s) : 2,
MR BH BHAGAT for Defendant(s) : 3,
MS LILU K BHAYA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 16/01/2007

ORAL JUDGMENT

1. The original claimant has approached this Court by way of this First Appeal against the judgment and

award made by MACT Panchmahals at Godhra dated 26th March, 1982 in MACP No. 330 of 1981. The limited question that has been agitated in this appeal is that though the Claims Tribunal has found that appellant deserves to receive Rs.7,500=00 by way of compensation for the damage caused to his property since he has received this amount from his insurance company ie., the New India Insurance Co. Ltd., namely respondent no. 3 herein, cannot be saddled with the liability to satisfy the award.

2. The vehicular accident in question took place on 15th November, 1980. In the said accident, the appellant's motor vehicle, namely truck bearing registration no. GTK 5159 got involved. It is the say of the appellant that when his vehicle was proceeding on Piplod Godhra highway, near Piplod around 5:00 a.m., another vehicle, namely truck bearing registration no. MP-1-4106 came from the opposite direction. According to the appellant, the said vehicle was driven in a rash and negligent manner, as a result of which, there was collision between the two vehicles. According to the appellant his vehicle was badly damaged and it required extensive repairing. He also claimed that because of the vehicle remaining idle under repairs in the workshop, he lost income that could have been generated by the said vehicle, had it not met

with the accident. The appellant, therefore, made a claim of Rs.20,000=00 before the Claims Tribunal.

3. The truck bearing registration no. MP-1-4106 was deleted from the proceedings by purshis at Exh.10. Original opponent no. 2, owner though served did not remain present before the Claims Tribunal. So far as respondent no. 3 New India Insurance Co. Ltd., is concerned, it filed written statement at Exh. 16. The insurance company resisted the petition on the ground that the averments made in the claim petition were not proper and they were not admitted. It also pleaded that the insurance of the appellant's truck was comprehensive one and, therefore, it must have received the compensation from its own insurance company and, therefore, the New India Insurance Co. Ltd., was not liable to pay any amount. It, therefore, prayed that their petition be dismissed.

4. On the basis of the material produced before it the Claims Tribunal found that it was the driver of the truck bearing registration no. MP-1-4106 who was totally negligent in driving the vehicle on the date of the accident and that resulted into the accident in question. The Claims Tribunal also found that since the vehicle was

owned by respondent no. 2, it was vicariously liable. The Tribunal also assessed the compensation which could be payable to the appellant at Rs. 7,500=00. However, it held that since the appellant's insurance company namely the United India Insurance Co. Ltd., had paid compensation at Rs.7,500=00 in accordance with the Surveyor's report, respondents no. 2 and 3 were not liable to satisfy the award. It is this finding which is under challenge in this appeal.

5. I have heard Mr. Dhaval Barot learned advocate appearing for Mr. D. F. Amin learned advocate for the appellant. Mr. M.A. Kharadi who earlier made a statement that he had instructions to appear on behalf of respondent no. 2 has today declared that he has no instructions and he is not in a position to appear and file his VP. Nevertheless, the statement of Mr. Kharadi adequately reveals that respondent no. 2 is already served with the notice of this appeal. So far as respondent no. 3 the insurance company is concerned, I have heard Ms. Bhaya. Mr. Barot has submitted that the finding given by the Tribunal is erroneous since it is well settled proposition of law that tort-feasor cannot take advantage of the collateral benefit received by the claimant. In the instant case, the insurance company of the appellant has made good loss suffered by the

appellant for damage to his property, but that would not absolve other side, namely respondents no. 2 and 3 from their liability to pay compensation to the appellant. Mr. Barot's submission deserves to be accepted. Recently in the case of **GSRTC v. H. R. Modi** I have rendered decision which is reported in **2006 (3) GLH at pg.673**, wherein, it has been held as under :-

> 7.1. So far as appeal of the owner of the tanker namely, M/s. Deepak Transport is concerned, the grievance is made that award of Rs.13,500=00 is obviously inadequate and the compensation is required to be enhanced. The submissions of Mr. Thakkar have been been recorded above. Mr. Thakkar is right in making submission that the deduction of Rs.16,000=00 is wrongly made. This amount has been received by M/s. Deepak Transport from the insurance company with which the tanker was insured against damage to the property. They have paid premium to ensure the coverage. This is a collateral benefit which the insured are entitled to receive for their prudent act. Can the tortfeasor take advantage of such benefit received by the insured? The answer has to be in negative. It is time and again held by various Courts including this Court that the tortfeasor cannot take advantage of collateral benefit that is made available to the victim. In the instant case, M/s. Deepak Transport has received Rs.16,000=00 for the damage caused to the tanker. The tortfeasor cannot claim any deduction on that basis from the amount which he is otherwise liable to pay by way of compensation.
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> 7.2. In the decision rendered by the Division Bench of this Court in the case of **L.I.C., v. L.R. Of deceased Naranbhai reported in 1972, G.L.R., pg.920**, it is held that the amounts received by the claimant on account of the insurance taken by him for his own benefit and with his own money, is a collateral benefit and such benefit could not be deducted from the

compensation amount. The co-ordinate Bench of this Court in a recent case viz. Dayaljibhai Manibhai Patel & Ors. v. Erachsha Dhanjisha Variyava in First Appeal No. 402 of 1986 has decided on 28th July, 2006, is as under :-

> "4.1. However, as far as the second contention of the appellant is concerned, I am of the view that the same cannot be accepted inasmuch as since the amount of Rs.12,000=00 was received from the insurance company by the respondent in lieu of the contract between the parties whereby the respondent used to pay regular premium and the benefit of the said contract cannot be extended to the present appellant. "

7.3. Hence the finding of the Tribunal on this issue is erroneous and it is set aside.

6. In view of the same, in my opinion, the Claims Tribunal has committed error in not directing respondents no. 2 and 3 to jointly and severally satisfy the award. The Claims Tribunal as already stated above, has assessed the damage at Rs.7,500=00 in accordance with the Surveyor's report. Therefore, the appellant deserves to receive the amount from respondents no. 2 and 3. Hence, respondents no. 2 and 3 are directed to pay the appellant a sum of Rs.7,500=00 together with 6% running interest from the date of the application till the date the award is made i.e., 26th March, 1982 and thereafter from March, 1993 i.e., the date on which the First Appeal is numbered and admitted till realization together with proportionate

costs.

7. In the result the appeal is allowed. R & P to to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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